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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,614	03/17/2006	David Peter Louis Simons	P08685USD0	7657
22885 7590 12/10/2008 MCKEE, VOORHEES & SEASE, P.L.C. 801 GRAND AVENUE SUITE 3200 DES MOINES, IA 50309-2721				
EXAMINER				
FEATHERSTONE, MARK D				
ART UNIT		PAPER NUMBER		
2423				
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12/10/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/572,614

**Applicant(s)**

SIMONS ET AL.

**Examiner**

MARK D. FEATHERSTONE

**Art Unit**

2423

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 4 and 6-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4, and 6-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

Response to amendment filed 10/30/2008. Claims 1, 4, 6, 9, and 11-14 have been amended. Claims 3 and 5 have been canceled. Claims 1-2, 4, and 6-14 are pending.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-2, 4, and 6-14 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 6, and 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barrett et al, US Patent # 6005597, hereinafter Barrett, in view of Wachob, US Patent # 5155591, hereinafter Wachob.

With regard to claim 1, Barrett discloses:

A system of apparatuses for receiving content items, the system comprising selection control means for controlling the apparatuses to select automatically (column 2, lines 20-24; Barrett discloses that the system sorts and presents programs to the viewer based on the order of predicted interest) the same content items for users having substantially the same user preferences (column

2, lines 34-43 - Barrett describes that viewers that have similar preferences, such as the television show "Friends", the system will conclude that those viewers will also like the show "Seinfeld").

wherein the selection control means is arranged to control the apparatuses to select a first content item and a second content item to a continuous schedule, wherein the first and second content items are sequential in accordance with the user preferences (column 2, lines 20-25; Barrett discloses that available programs are sorted and presented in descending order of predicted interest). Barrett fails to disclose that the system will automatically select the shows in the sorted schedule; instead the user must manually select the desired show.

Wachob discloses a system in which provides demographically targeted commercials to a user. In column 11, lines 26-35; Wachob discloses that total program material (including programs and commercials) can be selected by the converter based on the user's demographics. These programs automatically tuned according to the viewer preferences. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add the teaching of Wachob to automatically tune to programming based on user preferences to the system of Barrett that creates a schedule of programs based on user preferences and orders the programs sequentially based on which programs match the preferences the most, therefore overcoming the need for the user to manually select from the schedule of programs.

With regard to claim 2, Barrett discloses:

The system of claim 1, wherein the selection control means is arranged to control the apparatuses to select the content items simultaneously (column 11, lines 50-61; Barrett discloses that two or more receivers can be used, with channels simultaneously displayed wherein one receiver displays the highest scoring program and a second receiver displays the second highest scoring program, etc)

With regard to claim 6, Barrett discloses:

The system of claim 1, further comprising user profiling means for obtaining a collaborative user profile of the users having substantially the same user preferences (Figure 9, item 910 and column 2, lines 57-59), and a control schedule of subsequent content items, the selection control means being arranged to obtain said control schedule to control the apparatuses accordingly (column 2, lines 61-67; Barrett discloses a schedule of items that are of interest to the viewer, arranged in an on-screen menu used to control the television).

With regard to claim 8, Barrett discloses:

The system of claim 1, wherein the users having substantially the same user preferences are users of the same TV channel (It is inherent in the system of Barrett that two users in the same geographical television area would be tuned to the same channel if they had the same user preferences)

With regard to claim 9, Barrett discloses:

The system of claim 1, wherein the selection control means is arranged to communicate with at least one apparatus for receiving content items by using

wireless communication means, the wireless communications means comprising at least one mobile phone or remote control unit (column 7, lines 2-4; Barrett describes interaction with a remote control to select content)

With regard to claim 10, Barrett discloses:

The system as claimed in claim 1, wherein the at least one apparatus comprises content presentation means being at least one of a TV set, a video recorder, a DVD player, a home cinema system, a portable audio player, a portable video player, or a mobile phone (column 3, lines 48-49; Barrett describes the system for television program selection)

Claim 11 is the receiving apparatus of system claim 1, and is analyzed and rejected accordingly.

With regard to claim 12, Barrett discloses:

A remote control unit for communicating with an apparatus for receiving content items, wherein the remote control unit is arranged to control the apparatus to select automatically the same content items as another apparatus for receiving content items, with users of the apparatuses having substantially the same user preferences (column 4, lines 20-23; Barrett describes that the remote control can be used to successively select programs of lower ranking. As described in the claim 1 rejection, the system of Barrett is capable of selecting the same programs for users having the same user preferences).

Barrett fails to disclose that the system will automatically select the shows in the sorted schedule; instead the user must manually select the desired show.

Wachob discloses a system in which provides demographically targeted commercials to a user. In column 11, lines 26-35; Wachob discloses that total program material (including programs and commercials) can be selected by the converter based on the user's demographics. These programs automatically tuned according to the viewer preferences. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add the teaching of Wachob to automatically tune to programming based on user preferences to the system of Barrett that creates a schedule of programs based on user preferences and orders the programs sequentially based on which programs match the preferences the most, therefore overcoming the need for the user to manually select from the schedule of programs. The remote control could still be used to manually select a show if the user desires.

Claim 13 is the method of system claim 1, and is rejected as applied.

Claim 14 is the computer program to invoke the receiver of claim 11, and is rejected as applied. The receiver as taught by Barrett inherently is run by computer instructions.

3. Claims 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barrett, in view of Wachob, further in view of De Saint Marc et al, US Patent # 6839901, hereinafter De Saint Marc.

With regard to claim 4, Barrett in view of Wachob discloses the system of claim 3 (see claim 3 rejection), however he does not specifically disclose that the apparatus will select a second content item in response to an interruption of

receiving the first content item, wherein the first and second content items are related to the same broadcast live event.

De Saint Marc, in his patent, discloses this feature (column 1, lines 34-37; De Saint Marc discloses that it is popular to broadcast multiple camera angles or multiple matches of the same cup event; Column 2, lines 1-5; De Saint Marc discloses interrupting a broadcast with an event message concerning a broadcast on another channel; column 3, lines 2-5; De Saint Marc describes that upon receiving the event message, the decoder can automatically change the channel to show the event).

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the system of Barrett in view of Wachob with the feature of De Saint Marc. The advantage of this would be to further target programming to a viewer, as is the purpose of the system of Barrett.

With regard to claim 7, Barrett in view of Wachob discloses:

The system of claim 1 (see claim 1 rejection), however, does not specifically disclose the feature of an operator at the side of the selection control means instructing the selection control means to control the apparatuses accordingly.

De Saint Marc, in his patent, discloses this feature (column 2, lines 10-12; De Saint Marc teaches that the event message that interrupts the live event can be manually inputted by an operator at the transmission center. As described in



the claim 4 rejection, this message can cause the receiver to automatically tune to the relevant channel).

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the system of Barrett in view of Wachob with the feature of De Saint Marc. The advantage of this would be to allow for human to input an important message that a computer may not be programmed to do.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

### ***Contact***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK D. FEATHERSTONE whose telephone number is (571)270-3750. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F US Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Koenig can be reached on (571) 272-7296. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

E-Signed

/Mark Featherstone/ - Assistant Examiner

/Andrew Y Koenig/  
Supervisory Patent Examiner, Art Unit 2423